
Chapter - XX

OF OFFENCES RELATING TO MARRIAGE

Chapter XX—Summary. Chapter XX of the Penal Code which consists of Ss. 493 to S. 498 relates to offences relating to marriage. Section 493 deals with cohabitation or sexual intercourse caused by a man deceitfully inducing in the woman wronged a belief that she is lawfully married to him. The essence of an offence under this section consists in the practice of deception by a man on a woman, in consequence of which she is led to believe that she is lawfully married to him while in fact she is not lawfully married to him. What is required is that, by deceitful means, the accused must induce a belief of a lawful marriage and then make the woman cohabit with him.

Section 494 deals with the offence of polygamy *i.e.*, marrying again during life time of husband or wife.

Section 495 deals with offence of concealment of former marriage from person with whom subsequent marriage is contracted.

Section 496 deals with offence of conducting marriage dishonestly or with a fraudulent intention with the knowledge that he is not thereby lawfully married. The distinction between Ss. 493 and 496 is that an offence u/s 493 consists in giving a false assurance of the marriage to a woman and thereby procuring sexual-intercourse with her, while the offence u/s 496, consists in fraudulently going through the ceremony itself knowing that it was not lawful. [(1971) 2 Andh WR 278] In both the sections *i.e.*, Ss. 493 and 496 it is necessary to establish that the deceit and the fraudulent intention shall be found to have existed at the time of the marriage. [(1971) 2 Andh WR 278]

Section 497 relates to the offence of adultery while S. 498 provides for enticing away or detaining with criminal intent a married woman.

493. [***] *Repealed by Offence of Zina (Enforcement of Hudood) Ordinance, 1979.*

¹[493-A. **Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.**—Every man who deceitfully caused any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine.]

SYNOPSIS

1. Scope.
2. Deceitful cohabitation.
3. Charge.
4. Procedure.
5. Section 493 and S. 496.

¹ Inserted by Protection of Women Act, VI of 2006.

3. **Charge.** I (name and office of the Court of Sessions) hereby charge you (name of the accused) as follows:-

That you, on or about the _____ day of _____ at _____ by deceit caused a woman named _____ XY who was not lawfully married to you to believe that she was lawfully married to you, cohabited (or had sexual intercourse) with her; and that thereby you committed an offence punishable under section 493 of the Pakistan Penal Code and which is within the cognizance of the Court of Session.

And I hereby direct that you be tried on the said charge.

4. **Procedure.** Cognizable, Not bailable, Not compoundable, Rigorous imprisonment which may extend to twenty-five years and fine, Court of Sessions

5. **Section 493 and S. 496.** The distinction between Ss. 493 and 496 is that an offence u/s 493 consists in giving a false assurance of the marriage to a woman and thereby procuring sexual-intercourse with her, while the offence u/s 496, consists in fraudulently going through the ceremony itself knowing that it was not lawful. [(1971) 2 Andh WR 278] In both the sections i.e., Ss. 493 and 496 it is necessary to establish that the deceit and the fraudulent intention shall be found to have existed at the time of the marriage. [(1971) 2 Andh WR 278]

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception. This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

SYNOPSIS

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| 1. Scope. | 8. "Existing marriage". |
| 2. Charge. | 9. Second wife. |
| 3. Procedure. | 10. Marriage under Registration of Marriages Act, 1949. |
| 4. Abetment. | 11. Taking of cognizance by the Court. |
| 5. Exception. | 12. Mode of application and fee. |
| 6. Christian embracing Islam. | 13. Section 27, Contract Act. |
| 7. S. 6, Muslim Family Ordinance, 1961. | 14. Private complaint. |

1. **Scope.** Section 494 deals with the offence of marrying again during life time of husband or wife. It provides whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. A person being married if marries again, when such latter marriage is void by reason of its taking place during the substance of the earlier marriage, commits bigamy. The following are the essential ingredients of the section:-

- (i) The accused must have contracted a previous marriage;
- (ii) He must have married again;

to be illegal. [18 DLR 230] Mr. Justice Zaffarullah of Lahore High Court while interpreting the import of sections 177-78, Cr.P.C. has held that Magistrate of both the Districts have jurisdiction to try the accused, i.e. where the second marriage has been contracted in violation of the Ordinance, 1961 or where the wife ordinarily resides. [1982 P.Cr. LJ 1298]

11.1 Section 109, P.P.C. Provisions of s. 109, P.P.C is not applicable to offences under the Muslim Family Laws Ordinance, 1961 which is a special enactment. [1996 MLD 186; 1993 MLD 571]

12. Mode of application and fee. Application envisaged under sub-section (1) of section 6 for permission to contract second marriage shall state whether the consent of the existing wife or wives has been obtained thereto, and give brief statement of the grounds on which the proposed marriage is alleged to be justified and necessary. The application shall be accompanied by a fee of Rs. 100. [West Pakistan Rules (Rule 15)] In considering whether the proposed marriage is just and necessary, the Arbitration Council shall have regard to the following circumstances amongst other;

Sterility, physical infirmity, physical unfitness for the conjugal relation, wilful avoidance of a decree for restitution of conjugal rights, or insanity on the part of the existing wife. [West Pakistan Rules (Rule 14)]

13. Section 27, Contract Act. Provisions of s. 27, Contract Act would be deemed to yield to express provisions of s. 6, Muslim Family Laws Ordinance, 1961, which has overriding effect and must prevail notwithstanding any law to the contrary. Grant of no objection by wife to contract second marriage leading to certificate by Arbitration Council to be treated to be valid consideration for him to agree to alienate disputed portion of his house in her favour. [1999 CLC 188]

14. Private complaint. Private complaint instituted to wreak vengeance against previous husband, ex wife failing to establish guilt of accused, rightly dismissed. [2000 Cr.L.J. 357] Non-mentioning of fact having taken permission as required by s. 6(5) in Column No. 21 and 22 of Nikahnama does not afford a ground to recall order of acquittal. [2000 YLR 1324] Complaint filed u/s. 200, Cr.P.C. Order passed by Trial Court not covered by provision of s. 356, Cr.P.C. because said provisions pertain to record in trial before Courts of Sessions and in inquiry under Chapter XII, Cr.P.C. [2000 YLR 1420]

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

SYNOPSIS

1. Scope.
2. Charge.

3. Procedure.

1. Scope. Section 495, of the Code deals with offence of marrying again during the subsistence of valid marriage by concealment of former marriage from the person with whom subsequent marriage is contracted. It provides, whoever commits the offence defined in the

last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. To attract provision of this section the prosecution must prove the ingredient of s. 494 i.e.,

- i) The accused must have contracted a previous marriage;
- ii) He must have married again;
- iii) The spouse of the accused must have been living at the time of the second marriage;
- iv) The first marriage must be subsisting at the time of the second marriage;
- v) The second marriage should be void, under the personal law governing the parties, by reason of its taking place during the lifetime of the spouse of the accused.

And in addition also prove

- vi) That the accused, when marrying the second person, concealed from such person the fact of his earlier marriage.

The basic ingredient of an offence under this section is concealment of the fact of the earlier marriage and whether this took place at the residence of the complainants' parents is a question which can be decided only after entire evidence is taken. [1979 Cri LJ (NOC) 202] The admission of marriage by the accused is no evidence for the purpose of proving marriage in adultery and bigamy cases. [AIR 1966 S.C. 614]

2. Charge. I (name and office of the Court of Sessions) hereby charge you (name of the accused) as follows:-

That you, on or about the ____ day of ____ at ____ having a wife (or husband) living, married again XY and such marriage being void by reason of its being performed during the lifetime of the said wife (or husband); and that thereby you committed an offence punishable under section 495 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge.

3. Procedure. Not cognizable, Not bailable, Not compoundable. Imprisonment of either description for 10 years, and fine., Court of Session

496. Marriage ceremony fraudulently gone through without lawful marriage.—Whoever dishonestly or with a fraudulent intention, goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

SYNOPSIS

1. Scope.
2. Charge.
3. Procedure.
4. Abetment.
5. Complaint dying pendency enquiry.

1. Scope. Section 496 deals with marriage ceremony fraudulently gone through without lawful marriage. It provides, whoever dishonestly or with a fraudulent intention, goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The prosecution must prove the following ingredients:-

- i) That the accused went through the ceremony of marriage;
- ii) That when he went through such ceremony;

- iii) That he knew that he was not thereby lawfully married to the complainant; and
- iv) That he did so dishonestly or with a fraudulent intention.

The essence of S. 496 is that there should be a dishonest or fraudulent abuse of marriage ceremony and complaint of it by the person aggrieved if necessary. [1989 Cri LJ 1829] An offence u/s 494 is different from an offence u/s 496. If the accused intends that there should be a valid marriage and honestly goes through the necessary ceremonies during the lifetime of the other spouse then it may be an offence u/s 494 but if accused only intends that there should be show of marriage and dishonestly or fraudulently goes through the marriage ceremonies knowing fully well that he is not legally married then it is an offence u/s 496. [1982 Cri LJ 1005] The prosecution must prove that the accused knew at the time of the marriage, that the ceremony gone through does not constitute a marriage according to the law or custom governing the parties and deceitfully and fraudulently went through the ceremony of marriage. [AIR 1937 Cal 214] Where the accused had knowledge that the ceremony gone through does not constitute a marriage according to the law or custom governing the parties he or she will be guilty not only under this section but also of cheating punishable u/s 420. [1897 Pun Re (Cri) No. 7 p. 17 (DB)] Where the accused married complainant according to Hindu rites falsely representing himself as bachelor and subsequently complainant come to know that accused had first wife and two children and accused was convicted by Court for offences under Ss. 493, 495 and 496, P.P.C., on basis of judgment passed in matrimonial suit, without taking independent evidence, wherein first marriage of accused was proved and second marriage was held void, judgment was conclusive proof of first marriage under Article 55 of Qanun-e-Shahadat Order, 1984 and order of conviction not illegal. [(1990) 1 Cal HN 52 (DB)]

2. Charge. I (name and office of the Court of Sessions) hereby charge you (name of the accused) as follows:-

That you, on or about the ____ day of ____ at ____ dishonestly (or with a fraudulent intention) went through the ceremony of being married to XY, knowing that you were not thereby lawfully married; and that you thereby committed an offence punishable under section 496 of the Pakistan Penal Code and within the cognizance.

And I hereby direct that you be tried on the said charge.

3. Procedure. Not cognizable, Bailable Not bailable in N.W.F.P., Not compoundable, Imprisonment of either description for 7 years, and fine, Court of Session

4. Abetment. A priest who officiates at a show of ceremony of marriage cannot be held guilty of abetment unless it is proved that he shared the fraudulent intention of the accused. [(1906) 3 Cri LJ 488 (Kathiawar)]

5. Complaint dying pendency enquiry. Where a complaint is made by an aggrieved person and such person dies pending enquiry the enquiry does not abate and that the mother of the complainant could conduct the prosecution in such a case. [AIR 1967 S.C. 983]

²[496-A. Enticing or taking away or detaining with criminal intent a woman.—Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.]

Procedure. Cognizable, Not bailable., Not Compoundable, Imprisonment of either description which may extent to 7 years and fine, Court of Sessions, or Magistrate of the first class.

² Inserted by Protection of Women Act, VI of 2006.

[496-B. **Fornication.**—(1) A man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.

(2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.]

Procedure. Not cognizable, Bailable, Not Compoundable, Imprisonment which may extend to 5 years and fine not exceeding 10,000 thousand rupees, Magistrate of the first class.

[496-C. **Punishment for false accusation of fornication.**—(1) Whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees;

Provided that a Presiding Officer of a Court dismissing a complaint under section 203-C of the Code of Criminal Procedure, 1898 and after providing the accused an opportunity to show cause if satisfied that an offence under this section has been committed shall not require any further proof and shall forthwith proceed to pass the sentence.]

Procedure. Not cognizable, Bailable, Not Compoundable, Imprisonment which may extend to 5 years and fine not exceeding 10,000 thousand rupees., Magistrate of the first class.

497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, In such case the wife shall not be punishable as an abettor.

SYNOPSIS

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| 1. Adultery. | 10. Section 497 read with S. 241-A. |
| 2. Charge. | 11. <i>Bona fide</i> belief that the woman was a divorcee. |
| 3. Procedure. | 12. Azad Kashmir. |
| 4. Trial. | 13. Sentence—Factors to be considered. |
| 5. Cognizance of offence. | 14. Unmarried man and woman living together. |
| 6. Conniving. | 15. Right of private defence. |
| 7. Wife as abettor. | |
| 8. Mistress. | |
| 9. Sleeping on the same charpai. | |

1. **Adultery.** Section 497 defines the offence of adultery and also provides punishment thereof. According to S. 497 whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery. As held by the Madras High Court "The Law Commissioner have limited the cognizance of this offence to adultery committed with a married woman, and the

³ Inserted by Protection of Women Act, VI of 2006.
⁴ Inserted by Protection of Women Act, VI of 2006.

12. Azad Kashmir. Section 6 of the Amendment Act of 1948 clearly provides that it shall not be necessary that the Court shall take cognizance of offences under Ss. 493 to 498 of the Azad Kashmir Penal Code on the complaint of aggrieved person only. [PLD 1965 AJ&K 38 (DB)]

13. Sentence—Factors to be considered. The Court may consider the following facts:-

- 1) that taking advantage of the hospitality the complainant extended to him in return for the hospitality he had extended to the lady in the case and the complainant, the accused won the favours of the lady in the case who was the wife of the complainant;
- 2) that the accused called the complainant his younger brother evidently with the object of lulling him into a suspicion less state;
- 3) that the accused added insult to the injury that he had done the complainant by trying to depict him as a man who did not object to his wife having an affair with another man; and
- 4) that the accused was holding a high office under Government and in the belief that action would not be taken against him, took away the wife of the complainant in spite of his pleading that his home should not be broken up.

The other facts which have to be borne in mind are:-

- i) that though the accused was a highly placed official he cannot be held to have taken a mean advantage of his position which would have been the case if he had run away and committed adultery with the wife of a man residing within his jurisdiction;
- ii) that his conviction will, in all probability, result in his losing the important official position he took years to achieve; and
- iii) that his reputation would be lost and people would look upon him as a person who was unfit for the company of respectable women.

Weighing all the relevant facts, the Court came to the conclusion that the sentence should not be one of imprisonment but one of heavy fine. [PLD 1962 Lah. 558]

14. Unmarried man and woman living together. Sections 497 and 498 protect only a husband and not any other man who may have a woman living with him even though that union may in fact be as permanent as a marriage contracted in accordance with the law. [PLD 1962 Lah. 558] Sole evidence of woman being seen in company of accused persons, would not make out a case u/ss. 497 & 498, P.P.C. [1977 P.Cr.L.J. 151]

15. Right of private defence. Person having no title to property yet in settled possession for a long time can protect his possession by use of force. [1974 P.Cr.L.J. Note 157 p. 97]

498. Enticing or taking away or detaining with criminal intent a married woman.—Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Note. Sections 497 and 498, P.P.C. of Chapter XX repealed by Offence of Zina (Enforcement of *Hudood*) Ordinance (VII of 1979) cl. (a), sub-s. (2), S. 19.

SYNOPSIS

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| 1. Scope. | 7. "Any woman who is the wife of another". |
| 2. Charge. | 8. Knowledge or reason to believe. |
| 3. Procedure. | 9. Intention. |
| 4. Taking away. | 10. "Any such woman". |
| 5. Enticing. | 11. Abetment. |
| 6. "Conceals or detains". | |

1. **Scope.** Section 498 deals with enticing or taking away or detaining with criminal intent a married woman with intent that she may have illicit intercourse with any person. It provides, whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. The provisions of this section are intended to protect the rights of the husband and not those of the wife. The gist of the offence under this section is the deprivation of the husband, of his custody and proper control over his wife with the object of the accused having illicit sexual intercourse with her. [AIR 1959 S.C. 436] A woman even after dismissal of suit for dissolution of marriage if honestly believes her previous marriage having been dissolve due to her repudiation and honestly enters into marriage with another person, parties to such marriage not to be convicted of offence u/s 494, P.P.C. [PLJ 1982 Lah. 501] In order to attract the provision of this section the prosecution must prove:-

- i) That the woman in question is the wife of another man;
- ii) That she was under the care of her husband, or of someone on his behalf;
- iii) That the accused took or enticed her away from her husband, or that other person; or
- iv) That the accused concealed or detained the said woman;
- v) That the accused knew, or had reason to believe, that she was the wife of another man;
- vi) That the accused did so with intent that she might have illicit intercourse with any person.

The main ingredient of the offence is taking or enticing away the wife from the husband by a person. The prosecution has to necessarily prove that the accused has taken the wife from her husband with the criminal intent. Though the wife's complicity is immaterial, the section will not be attracted if she eloped with the accused in collusion. Thus, the wife is a material witness. Non-examination of the material witness would highly affect the case of the prosecution and the acquittal will be proper. [1997 Cri.L.J. 389 (Mad)] Strict proof of marriage is necessary. [AIR 1928 Lah. 165] The marriage must be legal and valid. [AIR 1965 S.C. 1564] The Court observed that the fact that a man and a woman lived together as husband and wife for a long time and that the woman bore children and that they were or are usually treated by others as husband and wife are not evidence of any valid marriage to sustain a prosecution under section 498, particularly in view of the provisions of Article 64, Qanun-e-Shahadat Order, 1984. [1978 Cr.L.J. 942] Long cohabitation may raise a presumption of marriage but a conviction cannot be based on such presumption. [AIR 1930 Lah. 230] The admission by the accused that the woman is the wife of the prosecutor is not enough. [AIR 1925 Oudh 701] The Court should require some better evidence of the marriage than the mere statement of the complainant and the woman. [(1897) 20 All 166]

1.1 Section 498 read with Ss. 11 & 16 Offence of Zina Ordinance, 1979. Provisions of Penal Code make no distinction between sexes of victims of offence of abduction and confines offence of enticing or taking away only against a married woman but Ordinance VII of 1979, creates such offences only against females. Possible, though, a female to commit such offences against another female yet no abduction or enticing or taking away of a male person by a female offender can take place. Likewise, not necessary under Ordinance for enticed woman to be married or of any particular age or status. Female accused, held, cannot be held guilty of offence of a male person. [PLD 1982 FSC 29]

2. Charge. I (name and office of the Magistrate, etc.) hereby charge you (name of the accused) as follows:-

That you, on or about the _____ day _____ at _____ took away (or enticed away or concealed or detained) a certain woman AB, the wife of XY whom you knew or had reason to believe that she was the wife of another man XY from the said XY or from one _____ who had the care of the said AB on behalf of the said husband XY with intent that the said AB might have illicit intercourse with some person; and thereby you committed an offence punishable under section 498 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charge by me.

3. Procedure. Not cognizable, Bailable Not bailable in N.W.F.P., Compoundable, Imprisonment of either description for 3 years, or fine, or both, Magistrate of the first or second class.

4. Taking away. The word "takes", imports, the personal or active assistance of the accused to the wife in getting her away from her husband's protection or from the protection of any person who was taking care of her on her husband's behalf. The offence is complete if it appears that the accused went away with the woman in such a manner as to deprive the husband of the control over his wife. [(1902) 4 Bom LR 435 (DB)] The fact that the woman is the tempter and the accused was at first reluctant to take her is not relevant and that even if the accused had merely yielded to the solicitation of the woman and gone away with her, it would amount to a "taking" within the meaning of this section. [(1865) 2 Mad HCR 331 (DB)] Fact that woman willingly accompanied accused will not diminish criminality if other ingredients of offence are proved. [1984 Cri LJ (NOC) 101 (Cal)] The word "takes" implies that the woman is taken away without the consent of the husband or of the person in whose protection she is. [(1936) 37 Cri LJ 1155 (DB) (Cal)] It is the taking or enticing of the wife from her husband or the person having the care of her on behalf of the husband for the illicit purpose that constitutes the offence. If, whilst the wife is living with the husband, a man knowingly goes away with her in such away as to deprive the husband of his control over her with the intent stated in the section, that constitutes taking from the husband within the meaning of the section. [1 Weir 569 (DB)]

4.1 Taking away—What. It is not very easy to say what taking away means, but I think there must be some influence physical or moral, brought to bear by the accused to induce the woman to leave her husband in order that her leaving may amount to taking away by the accused, and there is no evidence in this case of any physical or moral persuasion on the part of the accused. [PLD 1963 Dacca 798]

5. Enticing. The word 'enticement' necessarily connotes that some kind of persuasion or allurements was held out by the accused, who imposed his will or power upon the woman alleged to be enticed. [ILR (1965) Cut 530] Woman must be shown to have been enticed away from custody of her husband or husband's father or person retaining her custody on behalf of such persons. [PLD 1982 S.C. (AJ&K) 4] Inducement by a man to another's wife that if she wanted to maintain their friendship, she should agree to desert her husband's roof and live with him, in which case he undertook to keep her as his mistress, held to amount to an